

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 883 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 7 NO.

RAFIQBHAI MOHMEDBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR HL JANI, ASST.GOVERNMENT PLEADER for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 21.12.97 passed by the District Magistrate, Bhavnagar under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on the three criminal cases registered against the petitioner at A Division Police Station, Bhavnagar for the offences punishable under Sections 452, 324, 323, 114 of the IPC and Section 135 of the Bombay Police Act, two out of which are pending in the competent court, while one is under investigation. Besides, these criminal cases, further reliance is placed by the detaining authority on the statements of three witnesses for the alleged incidents which took place on 3.11.97, 14.9.97 and 10.10.97.

With regard to the first incident, it is alleged against the petitioner that the petitioner and his two associates had gone to the shop of the witness and purchased pan and cigarette from the witness and when the witness demanded money he was threatened to vacate the shop. On being refused to do so, the petitioner and his associates got excited and caused damage to the belongings of the shop with sword and pipes. When the people collected and tried to rescue the witness, the petitioner rushed towards the crowd. As a result the crowd started running helter skelter.

With regard to the second incident, the allegation is that the petitioner and his associates demanded Rs.5000/- from the witness and on being refused to accede to the demand he was attacked with weapons, as a result the witness sustained injuries on his left elbow. People gathered and when the petitioner rushed towards them, the crowd started running helter skelter and an atmosphere of terror was created.

So far as the last incident is concerned it is alleged that the petitioner caused knife injury on the right hand finger of the witness on the suspicion that he is the man of one Harubhai Gondalia.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

I have gone through the statements of the witnesses as well as the allegations made against the

petitioner in the criminal cases. Assuming for the sake argument that the allegations against the petitioner are true, even then the activity of the petitioner cannot be construed as breach of public order. The allegation made against the petitioner are quite general, vague and they are against individuals with which the public at large are not concerned at all. Thus, for the alleged breach of law and order situation, the petitioner cannot be branded as a dangerous person with a view to maintain the public order. Thus, the subjective satisfaction arrived at by the detaining authority is not genuine and the order of detention is therefore vitiated.

In the result, this petition is allowed. The order of detention dated 21.12.97 is quashed and set aside. The detenu Rasool @ Shakti Mohammadbhai is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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